



Department of Corrections
ADMINISTRATIVE BULLETIN

Subject: SEXUAL HARASSMENT

Number:

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The purpose of this Administrative Bulletin (AB) is to update the sexual harassment prevention policy of the California Department of Corrections (CDC), and to remind employees of their rights and responsibilities in ensuring a harassment-free work environment.

STATEMENT OF COMMITMENT

It is the policy of (CDC)) to maintain a work environment free of discrimination. Sexual harassment is a form of discrimination that deprives victims of equal employment opportunity. State and federal laws mandate equal employment opportunity. These laws apply to applicants, employees, and individuals who provide contract services to CDC. As Director of this department, it is my responsibility to ensure that all CDC employees comply with these laws.

The primary purpose of CDC's sexual harassment prevention policy is to prevent inappropriate sex-based conduct and to provide a work environment free of harassment. Employees are expected to adhere to a standard of conduct that is respectful of all persons within the work environment. Off-duty activities which affect the work environment are also included. CDC will not tolerate any form of sexual harassment or reprisal for objecting to such conduct.

DEFINITION OF SEXUAL HARASSMENT

The U. S. Equal Employment Opportunity Commission (EEOC), the California Department of Fair Employment and Housing (DFEH), and the State Personnel Board (SPB) define sexual harassment to include:

- 1) Unwelcome sexual advances that implicitly or explicitly condition an employment benefit on submission to such advances. An example of such conduct is a male supervisor's threat or suggestion to his female subordinate that she have dinner with him if she is interested in being promoted. This type of conduct is known as "quid pro quo" or "conditional" sexual harassment.
- 2) Unwanted sexual conduct that offends an individual enough that it creates an intimidating or hostile work environment, that interferes with the victim's ability to perform his or her job, or that interferes with the victim's emotional well-being. An example of such harassment is a supervisor or co-worker's unwanted comments to an individual about his sexual prowess or about the provocative way the individual dresses. It may also include:
 - a) Verbal or written derogatory, sex-based comments; suggestive or obscene letters or notes;



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- 2 -

- b) Visual conduct of a sexual nature such as explicit, offensive pictures, drawings, or cartoons;
- c) Physical conduct of a sexual nature such as impeding or blocking movement, gestures, or unwanted physical touching.

This type of conduct is known as "work environment" sexual harassment. Any conduct or communication of a sexual nature that has the intent or effect of interfering with the victim's work performance or of creating an offensive work environment constitutes sexual environment.

MEASURING WORK ENVIRONMENT SEXUAL HARASSMENT FROM THE VICTIM'S PERSPECTIVE

Under federal law, Title VII of the 1964 Civil Rights Act, work environment sexual harassment has traditionally been measured by whether a "reasonable person" would consider the conduct offensive. However, in a recent U.S. Court of Appeals decision, Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991), the court concluded that the presence of a hostile environment should be judged from the perspective of a "reasonable woman." This means that the female victim's perception of the conduct will largely determine whether the incidents are sufficiently severe to create an offensive environment.

The Ellison v. Brady standard brought the federal law closer to state law's interpretation of a hostile work environment. Under the California Fair Employment and Housing Act, the environment is evaluated from the victim's perspective. This standard acknowledges that an individual may suffer work environment sexual harassment even where her co-workers, or a reasonable person, would not be offended by the sexual conduct.

Employees, managers, and discrimination complaint investigators should be aware that sexual harassment complaints may be substantiated, in part, by the victim's perception of a hostile working environment. If the conduct is of a sexual nature and the victim is credible, the victim's perception of the environment *will be* given great weight. It is no defense to a hostile environment allegation that the sexual conduct was commonly encountered in the work place. It is no defense that other employees in the work unit found the conduct acceptable.



Department of Corrections
ADMINISTRATIVE BULLETIN

Subject: SEXUAL HARASSMENT

Number:

92/11

Date Issued:

April 13, 1992

Cancelled Effective:

- 3 -

LIABILITY FOR SEXUAL HARASSMENT

Under state and federal laws, liability and damages for sexual harassment may be ascribed to the individual harasser, the harasser's supervisors and managers, and the employee's department.

Individual Harasser Liability

When an individual employee is found guilty of sexual harassment, the employee may be **personally** liable. This means that if monetary damages are awarded, the employee may be responsible for paying part or all of the damages. Monetary damages may include substantial compensatory and punitive damages. Employees will also be subjected to CDC disciplinary action, up to and including termination.

Supervisor and Manager Liability

Supervisors and managers are legally responsible for ensuring a harassment-free work environment. This means that supervisory personnel must take immediate action if they know or should know that one of their subordinates may be sexually harassing a co-worker. Failure to take appropriate action may expose the supervisor or manager to **personal** liability for damages, as well as CDC's disciplinary action.

CDC Liability

The Department is liable for the conduct of supervisors and managers who engage in sexual harassment. CDC is also liable for the sexual harassment of non-supervisory employees if any of the Department supervisors knew or should have known about the harassment, yet failed to take appropriate action.

SUPERVISOR'S RESPONSIBILITIES

Supervisors are responsible for setting the tone for a harassment-free work environment and for taking appropriate measures whenever they witness or hear about conduct that could be construed as sexual harassment. Staff should be reminded that sexual harassment in any form will not be tolerated and that discrimination complaints will be dealt with immediately. Staff should be informed that retaliation against any person who complains about sexual harassment is unlawful, and that appropriate disciplinary action will be taken.



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Cancelled Effective:

- 4 -

When an employee complains about sexual harassment, supervisory staff shall respond immediately, objectively, and completely. The following guidelines apply:

- 1) Listen to the complaint nonjudgmentally. Obtain the details of the alleged harassment, the frequency of the incidents, the names of possible witnesses, and a description of how the alleged harassment affected the individual's emotional well-being and work environment. Ask the employee to provide any physical evidence of the alleged harassment such as letters, cartoons, a doctor's evaluation, or therapist's report. Assure the employee that you will make an immediate inquiry into the allegation and will try to resolve it informally. Remind the employee about his or her right to file an informal or formal discrimination complaint.

Supervisors shall conduct an inquiry even if the complaint is withdrawn or the employee requests that no action be taken. Once a sexual harassment allegation is brought to the attention of a supervisory employee, the supervisor is legally obligated to ensure that the work environment is free of discrimination.

- 2) If the alleged harasser is a peace officer, and the allegation is such that adverse action could be taken, the Public Safety Officer Procedural Bill of Rights must be observed (Government Code Sections 3300-3311).
- 3) Interview the alleged harasser. If the employee admits to the alleged conduct, inform the employee that the conduct is unwelcome and must stop. Take appropriate disciplinary action based on the seriousness of the conduct. Emphasize that retaliation against the complaining party is prohibited and will result in further disciplinary action.
- 4) Inform the employee of the results of the inquiry. If the inquiry supports the employee's allegation, inform the employee that appropriate corrective action is being taken. Explain to the employee that specifics regarding the corrective action cannot be disclosed. Inform the employee that he or she has a right to be free of retaliation for complaining, and that any retaliation should be reported.
- 5) If the employee is not satisfied, explain the employee's rights and the informal and formal discrimination complaint process.
- 6) If the alleged harasser denies the incidents, conduct a fact-finding inquiry. Interview all witnesses suggested by the employee. Ask employees whether they observed the alleged conduct, whether the complaining party ever told them about the conduct, or whether they



Department of Corrections
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Cancelled Effective:

- 5 -

have experienced similar conduct from the alleged harasser. Emphasize that you are interested in any information that supports or disproves the allegation.

- 7) Review the personnel records of the accused to determine if there is evidence of past incidents or complaints of sexual harassment.
- 8) If the complaint is substantiated, consult with the unit or branch manager to determine what disciplinary action is required. Forward all pertinent information and recommendations to all appropriate administrative personnel.

Maintain a copy of the results of the fact-finding inquiry and the resulting recommendations.

- 9) Take appropriate disciplinary action. Contact the complaining employee and convey the information referenced in (4) and (5), above.
- 10) Continue to monitor the work environment to prevent future harassment or retaliation

EMPLOYEE'S RIGHTS AND RESPONSIBILITIES

Employees who feel they have been sexually harassed, retaliated against for complaining about sexual harassment, or retaliated against for participating in a sexual harassment inquiry, may pursue any of the following avenues of redress:

- 1) Ask their supervisors to informally resolve the concern.
- 2) File a CDC informal discrimination complaint using the process contained in the Department Operations Manual (DOM), subsection 31010.12.4, Informal Complaints.
- 3) File a CDC formal discrimination complaint using the process contained in DOM subsection 31010.12.55, Formal Complaints.

Affirmative Action Office
P. O. Box 942883
Sacramento, CA 94283-0001
(916) 322-9520
ATSS: 492-9520



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Cancelled Effective:

- 6 -

- 4) File a complaint with the DFEH within one year from the alleged unlawful act:

DFEH
2000"0" Street
Sacramento, CA 95814
(916) 445-9918
ATSS: 485-9918

- 5) File a formal complaint with the EEOC within 300 days of the alleged unlawful act:

EEOC
901 Market Street, Suite ~00
San Francisco, CA 94103

- 6) File a formal Complaint with the SPB within 30 days after completing the departmental complaint process:

SPB
Appeals Division
801 Capitol Mall
P. O. Box 944201
Sacramento, CA 94244-2010

Please inform all persons concerned of the contents of this bulletin which shall remain in effect until incorporated into the DOM, Section 31010. Any inquiries regarding this bulletin should be directed to Nora Brusuelas, Assistant Director, Affirmative Action, at (916) 322-9520 or ATSS 492-9520.

JAMES H. GOMEZ
Director of Corrections